

ASSEMBLY BILL

No. 2656

Introduced by Assembly Member Charles Calderon

February 24, 2012

An act to amend Section 17085 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2656, as introduced, Charles Calderon. Personal income taxes: retirement plans: early distributions.

The Personal Income Tax Law, in modified conformity to federal income tax laws, imposes an additional tax upon early distributions from specified retirement plans, as provided.

This bill would, for taxable years beginning on or after January 1, 2013, not impose that additional tax on the first \$50,000, or 50% of value of the retirement account, whichever is less, distributed to an individual for the purpose of paying qualified mortgage costs, as defined.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17085 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 17085. Section 72 of the Internal Revenue Code, relating to
- 4 annuities; certain proceeds of endowment and life insurance
- 5 contracts, is modified as follows:

(a) The amendments and transitional rules made by Public Law 99-514 shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except that the repeal of Section 72(d) of the Internal Revenue Code, relating to repeal of special rule for employees' annuities, shall apply only to the following:

(1) Any individual whose annuity starting date is after December 31, 1986.

(2) At the election of the taxpayer, any individual whose annuity starting date is after July 1, 1986, and before January 1, 1987.

(b) The amount of a distribution from an individual retirement account or annuity or employee trust or employee annuity that is includable in gross income for federal purposes shall be reduced for purposes of this part by the lesser of either of the following:

(1) An amount equal to the amount includable in federal gross income for the taxable year.

(2) An amount equal to the basis in the account or annuity allowed by Section 17507 (relating to individual retirement accounts and simplified employee pensions), the increased basis allowed by Sections 17504 and 17506 (relating to plans of self-employed individuals), the increased basis allowed by Section 17501, or the increased basis allowed by Section 17551 that is remaining after adjustment for reductions in gross income under this provision in prior taxable years.

(c) (1) Except as provided in paragraph (2), the amount of the ~~penalty~~ *additional tax* imposed under this part shall be computed in accordance with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code, as applicable for federal income tax purposes for the same taxable year, using a rate of 2½ percent, in lieu of the rate provided in those sections.

(2) In the case where Section 72(t)(6) of the Internal Revenue Code, relating to special rules for simple retirement accounts, as applicable for federal income tax purposes for the same taxable year, applies, the rate in paragraph (1) shall be 6 percent in lieu of the 2½ percent rate specified therein.

(3) (A) *Notwithstanding paragraphs (1) and (2), for taxable years beginning on or after January 1, 2013, an individual shall not pay the additional tax described in paragraph (1) for early withdrawal of a qualified principal residence mortgage payment*

1 *distribution from his or her retirement account when the moneys*
2 *are used to reduce qualified mortgage costs.*

3 *(B) For the purposes of this paragraph:*

4 *(i) “Qualified mortgage costs” means amounts paid as principal*
5 *or interest on acquisition indebtedness, as defined in Section*
6 *163(h)(3)(B) of the Internal Revenue Code, except that the dollar*
7 *limitation in Section 163(h)(3)(B)(ii) of the Internal Revenue Code*
8 *shall not apply.*

9 *(ii) “Qualified principal residence mortgage payment*
10 *distribution” means a payment or distribution received by an*
11 *individual to the extent that the payment or distribution is used by*
12 *the individual before the close of the 120th day after the day on*
13 *which that payment or distribution is received to pay qualified*
14 *mortgage costs with respect to a principal residence of the*
15 *individual or spouse of the individual.*

16 *(C) The aggregate amount of qualified principal residence*
17 *mortgage payment distributions received by an individual for all*
18 *taxable years shall not exceed fifty thousand dollars (\$50,000) or*
19 *50 percent of the value of his or her retirement account on the day*
20 *of the withdrawal.*

21 *(D) The Franchise Tax Board may promulgate regulations as*
22 *necessary or appropriate to carry out the purposes of this*
23 *paragraph.*

24 *(d) Section 72(f)(2) of the Internal Revenue Code shall be*
25 *applicable without applying the exceptions which immediately*
26 *follow that paragraph.*

27 *(e) The amendments made by Section 844 of the Pension*
28 *Protection Act of 2006 (Public Law 109-280) to Section 72(e) of*
29 *the Internal Revenue Code, shall not apply.*

30 *SEC. 2. This act provides for a tax levy within the meaning of*
31 *Article IV of the Constitution and shall go into immediate effect.*